

Wendy Wiles, Administrator
Environmental Solutions Division
Department of Environmental Quality
Agency Headquarters
811 SW Sixth Avenue
Portland, OR 97204-5696

RE: Waiver Request of the 50%/50% Spending Requirement of 319(h) Funding

Dear Ms. Wiles:

The purpose of this letter is to respond to your September 20, 2016, request for a waiver to deviate from the Clean Water Act Section 319(h) National Program Guidance which requires states to use at least 50% of the Section 319(h) funds to implement watershed projects. The waiver request, for FY 2015 and FY 2016, cites difficulties in meeting this requirement because the State's 319 awards were penalized when NOAA and EPA determined the Oregon Coastal Non-point Pollution Control Program (CNPCP) was not approvable. In each year the penalty was taken from the portion of the award intended for non-point source implementation projects because the "non-project" implementation funds supported the Performance Partnership Agreement (PPA) which funded staff who are connected to and implement the State's Non-point Source Management Program Plan.

EPA fully appreciates the budgeting difficulties the Oregon Department of Environmental Quality (DEQ) has experienced in the last two 319(h) funding cycles because of the CNPCP decision. EPA also recognizes the importance of funding staff who implement the State's non-point source program for without them, the program would not get implemented. While EPA generally supports DEQ's waiver request, I offer the following regarding your request, and more broadly, on key points regarding the implementation of DEQ's 319 program.

In your waiver request you indicate that the penalties from the CNPCP decision were the cause of the State not being able to meet the "50/50" spending requirement in the 319(h) National Program Guidance, and that DEQ is committed to work with EPA, NOAA and other State agencies to address the CNPCP gaps and eliminate the 319 penalty. EPA sincerely appreciates DEQ's commitment to work together to address the gaps to eliminate the penalties, however, based on the figures in your letter, it appears that the "50/50" spending requirement would not have been met in either year even before applying the penalties. This is not inconsistent with years prior to FY 2015 in which DEQ used the majority of its 319 award to support the PPA to fund staff who work on non-point source program implementation. Until DEQ changes how it divides its 319 award between the PPA and project implementation, it is highly unlikely that DEQ will meet the "50/50" spending requirement.

As you know, EPA does provide in its 319 guidelines, an exemption from the 50% spending requirement for those states that devote and leverage significant (beyond the 40% match) non-federal resources in implementing their NPS plan. In your letter you identified a number of activities the state staff are involved with which directly support non-point source implementation projects. EPA is aware of many of these activities since members of my staff are involved with your staff on some of the projects. EPA is also keenly aware of the millions of dollars the Oregon Watershed Enhancement Board spends annually to support restoration projects that address non-point sources of pollution. , and that DEQ is exploring the use of a "leveraged exemption" to address the "50/50" funding requirement. As such, EPA fully supports DEQ's exploration of the use of a "leveraged exemption" to address the "50/50" funding

requirement in future years.

Leveraged Exemption

Timing of the request

Likelihood that the State would not have been able to make the 50/50

Recognition that the State is doing lots of non-point source work and the basin coordinators are very active in working on nonpoint source issues

Lack of staff at headquarters – need a commitment to reviewing the states

We have to recognize that while the spending imbalance has been influenced by the CNPCP penalties, the pecwas not being achieved. Years prior to

Commitment to establishing milestones for timely delivery of Intended Use Document, Annual Report, Waiver or exemption process

Balanced approach.

If you have questions or concerns regarding this letter, please feel free to call me at (206) 553-1855 or you can contact Alan Henning of my staff at (541) 687-7360. Thank you for your continued efforts to improve water quality and protect the State's waters from non-point pollution.